It certainly seems arguable, in respect of the transaction set out in paragraph 10(i) of the plaint for example, that the price realised on the sale of the land would vary considerably in value if reference is to Japanese or local currency. Some interrogations were put by the defendants to the plaintiff and are attached to the affidavit dated 20th March, 1948, but they are not very explicit; in any event, it would seem that the defendants being the executors and trustees, and not the plaintiff, could better explain the form and currency used. And quite what was the object of inquiring whether monies apparently used in 1947, vide interrogatory referring to paragraph 10(m), refer to Japanese currency, is not clear. The reply is equally ambiguous. Interrogations are most valuable in preliminary proceedings; I wish they were made use of to a much greater extent.

It would be, of course, highly desirable to proceed with this action with the minimum of delay, but besides the allegations in the plaint, I understand that certain assets for reason of their nature, could not be disclosed to the Japanese invaders. There is a large loan free of interest to His Majesty's Government, and a further large investment in War Loan; obviously disclosure of either of these items would have placed the family in dire peril.

This situation affected the valuation of the estate, and I observe the death duties were paid *at the time of* Re-occupation. Now a further valuation has been made and is being met, which will naturally involve in due course considerable adjustment in the estate accounts, for the first payment was in Japanese currency and at a time when such currency had little value.

Mr. Rintoul insists that satisfactory progress cannot be made in this action without constant reference to Japanese currency payments. I think there can be no doubt as to this, but would such figure references of account be such as to require these proceedings to be stayed by virtue of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946? To endeavour to separate the issue is resisted by the plaintiff, and the suggestion met with no response by the defendants. I also suggested the appointment of a receiver pending the promulgation of the Debtor and Creditor (Occupation Period) Ordinance 1948, and to this the plaintiff assented, but the defendants objected on the grounds of expense.

It is necessary, therefore, as agreed by Counsel, for the Court to decide whether matters relating to or involving Japanese currency will arise or fall to be considered.

Now what is meant by "relating to" and "involving"? *Chambers* 20th Century Dictionary construes "relate" as "to have reference: to refer"; and the meaning of "involve" is given as "to implicate: to include". Dictionary definitions have been deprecated (*Maxwell* on Interpretation of Statutes, 9th Edition, page 24), but here I am constrained to interpret and apply to these proceedings the meaning of two very ordinary prepositions in the form of participles "relating to or involving".

It seems not unlikely that the original intention of the legislation promulgated by the British Military Administration was to restrict temporarily — until the enactment of the Debtor and Creditor (Occupation Period) Ordinance, 1948, which cannot now be long delayed — the jurisdiction of this Court only in those suits referring to land and debt, but the words "relating to or involving" used in the Ordinance cover a far wider field.

It is the duty of this Court to give the expression it's ordinary meaning, and not to entertain speculation as to what the legislature intended, or to scan it's policy (*Maxwell* on Interpretation of Statutes, 9th Ed. page 4).

I am not disturbed as to the construction of the phrase "arises or falls to be considered". I do not like it, for although it may be possible to hold that a question or matter arises, when does it fall? Or does a question arise and a matter fall? However it is a phrase in general use, and there can be no real difficulty of interpretation. Counsel made no reference to it.

I have no doubt that in this suit questions or matters relating to or involving Japanese currency must arise or fall to be considered.

I hold, therefore, that this Court lacks the necessary jurisdiction to hear and determine this action, and the suit is stayed accordingly.

I see, however, no reason why the defence should not be filed, and subject to argument on this point, the pleadings should be settled within 14 days.

Order Accordingly.

SIM AH MAN v. PUBLIC PROSECUTOR AND WONG PIANG SENG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Laville, J.) July 3, 1948]
[Johore Bahru — Criminal Appeals Nos. 4 & 5 of 1948]

Weights and Measures Enactment S. 18—Charge of carrying excess weight above that allowed in haulage permit—Onus of proving correctness of machines and of method of weighing lorry.

In these cases the accused were charged and convicted for carrying an excess weight above that allowed in the respective haulage permits of their lorries. On appeal, it was argued that it was incumbent on the prosecution to show affirmatively that the weight recorded by the weighing machine used to weigh the lorry and its load at the Police Station was correct on the date at which the weighing was done.

Held, (1) that the onus was on the prosecution to prove that the methods used to ascertain the weight of the lorry and load were accurate when tested by the standard weights of the country; (2) that technical expert evidence should be called to show the correctness of the method used in weighing the lorry and its load.

CRIMINAL APPEAL.

A. N. Mitra for the appellants.

W. M. McCall (Federal Counsel) for the respondent.

Laville, J.:—Mr. Mitra appears in both appeals for the appellants while the D.P.P. appears for the prosecution.

In each appeal the grounds of appeal are similar and it is agreed that the decision in one appeal will apply to the other. The matter was argued in appeal No. 4 of 1948.

The facts are that on 23/2/48 at 5.20 p.m. lorry No. J 2523 was stopped at Ayer Hitam Police Station for weighing. It is common ground that the lorry was drawing a trailer with 2 wheels, and that the lorry itself had 4 wheels, and that it was being driven by appellant. The prosecution aver that it contained distributed over the 6 wheels 4 logs of wood, the appellant says 3 logs. It is conceded that the maximum laden weight of the vehicle J 2523 was to be, according to its haulage permit No. 3886 of 3/7/47, 5 tons, 12 cwts. 14 lbs.

The lorry and trailer and the load were weighed on a machine at Ayer Hitam Police Station and found to weigh, according to the police evidence, 12 tons, 19 cwts. 3 qrs. 21 lbs., that is, 7 tons, 7 cwts. 3 qrs. and 7 lbs. over the permitted weight.

The defence was that there was no certificate of correctness of the machine used for weighing produced to appellant when he demanded it.

Cross-examination in the lower Court was directed to the two points on which the present appeal turns, and the prosecution, while contending that the machine was in order on the ground that an engineer had tested it in November, 1947, conceded that they could not say if it was in good working order or accurate as to weight, nor could they say if the weight shown when the rear wheels of the lorry and the trailer wheels were weighed included the weight of the load taken by the front wheels of the lorry.

The Court convicted and fined accused $500 for carrying an excess weight above that allowed in his haulage permit.

The grounds of appeal are firstly that it is incumbent on the prosecution to show affirmatively that the weight recorded by the weighing machine is correct on the date at which weighing is done and that this should be evidenced by production of a certificate under sec. 18 of the Johore Weights and Measures Enactment No. 72, and that the onus was not on the defence to prove the incorrectness of the weight.

As to sec. 18 of the Weights and Measures Enactment, the provisions of that Act apply only to machines used for trade purposes including the collection of tolls and duties. The weighing of vehicles for the purpose of seeing whether they are overloaded or not does not fall within its scope and I can find no authority which demands that weighing machines used by the police for this purpose or by the Transport Control for the purpose of fixing the weights of vehicles must be accurate or must be certified to be so. There seems to be no reason why such machines should not be brought under the provisions of the Weights and Measures Enactment, but the fact remains they have not so been.

As the whole foundation of the prosecution case in charges of over-weight or under-weight depends on the accurate and proper functioning of the machines used to estimate it, it appears reasonable that it should be part of the onus thrown on the prosecution to prove that what they allege to be the weight is the correct weight. In order to do this it is necessary to prove that the methods employed to ascertain it, whether mechanical or otherwise, are accurate when tested by the standard weights of the country. Once the machines and the weights are certified as correct, or proved to be correct, the Court may under sec. 114 of the Evidence Enactment presume the continuance of correctness for a reasonable period until the presumption is rebutted by the accused.

In regard to the question of whether the method of weighing laden lorries and trailers is correct, in my view technical expert evidence should be called to prove to the Court that no double weighing of any part of the laden lorry and trailer takes place in adopting the method followed in this and similar cases.

For these reasons I am of opinion that the appeal should be allowed, but as the alleged over-weight is so great as to seem to exclude any possibility that there was no excess weight, I order that the case be sent back for retrial, evidence being called to show that in November, 1947, the machine used was accurate and that it still is, and also that the method of computing the weight is correct.

Appeal allowed, conviction and sentence set aside and a retrial ordered.

A similar order is made in respect of Criminal Appeal No. 5 of 1948.

Appeal Allowed.
Retrial Ordered.

BAHRU ZAMAN BIN ALI v. PUBLIC PROSECUTOR

[App. Crim. Juris. (Storr, J.) July 17, 1948]
[Ipoh — Criminal Appeal No. 55 of 1948]

Penal Code Ss. 406 and 409 — Criminal breach of trust — Denial of receipt of money — Dishonest misappropriation.

In this case the appellant was convicted of criminal breach of trust of money entrusted to him as clerk in the Parcels Office, Malayan Railways. The evidence was that a passenger handed 50 cts. to appellant as demurrage charge but was not issued any receipt for the payment. When appellant was subsequently questioned he denied receiving the money. On appeal it was argued **inter alia** (a) that there was no evidence of misappropriation and (b) that the money was not due to the Railway and therefore there could be no criminal breach of trust of it.

Held, (1) that the denial of the receipt of money proved to have been received by an accused person is evidence of dishonest misappropriation; (2) that when money is given to any person in his official capacity, whether he has any right to take it or not, he is entrusted with it within the meaning of S. 406 of the Penal Code.

Cases referred to:—

(1) *R. v. Jones* 7 C & P. 834.
(2) *R. v. Creed* 1 C & K. 63.
(3) *Public Prosecutor v. Abdul Wahab* (1938) F.M.S.L.R. 151; (1939) M.L.J. 247.

CRIMINAL APPEAL FROM DISTRICT JUDGE.

T. Rajendra for the Appellant.

M. G. Neal (Federal Counsel) for the Respondent.

Storr, J.: — The Appellant was charged before the District Judge, Ipoh:—

> That you on 17/5/48 at Ipoh, being a public servant employed as a clerk in the Parcels Office, Malayan Railways, and in such capacity entrusted with certain property, to wit, cash 50 cents collected from one Leong Yee Pun as cloak room charges, committed Criminal Breach of Trust with respect to the said property, and that you have thereby committed an offence punishable under Section 409 Cap. 45.

convicted and sentenced to 7 months simple imprisonment. He has appealed against both sentence and conviction.

The facts briefly were that the Appellant was a parcels clerk in the Malayan Railways. His duties, *inter alia*, was to hand over parcels to passengers who produced duplicate Waybills for Luggage and other Articles accompanying Passengers (Tfc. 399), and, if necessary, charge demurrage or "cloak room" fees and issue receipts for same. On the 17th May of this year one Leong Yee Pun went to the Parcels Office, Ipoh Railway Station, saw the accused and handed him Ex. P.1, a duplicate "Waybill for Luggage and other Articles accompanying Passengers" to prove his ownership to the goods stated therein. The Appellant handed him the articles and was handed 60 cents by Leong Yee Pun being three 20 cent notes for a 50 cents demurrage charge demanded by Appellant for the night 16/17 at 10 cents per article. He was given 10 cents change but no receipt for the 50 cents. This transaction was witnessed by Railway Detective Sergeant 166, who immediately went up to Leong Yee Pun and asked if he had received any receipt for the money paid. He received a negative reply and they both went to see the Senior Assistant Traffic Superintendent, Mr. Foley, who, after questioning Leong Yee Pun, went to the Parcels Office and questioned Appellant. Appellant denied absolutely receiving 50 cents or any sum from Leong Yee Pun, and that, in effect, was his defence to the charge. However, Mr. Foley found $1.50 in one corner of his drawer and three 20 cent notes which made 50 cents over the amount shown by the Appellant's books to be there. The Appellant was arrested and charged.

I accept the facts as found proved by the learned District Judge.

In the Appeal, Mr. Rajendra relied mainly on three points. Firstly, that there was no evidence of misappropriation as the money, even according to the prosecution story, remained in the railway drawer used by the Appellant and the action of the prosecution was premature. Secondly, that in any event, according to the Tariff Rules, the money was not due to the Railway and therefore there could be no criminal breach of trust of same, and, thirdly, there were discrepancies in the evidence.

As to the first point submitted by Mr. Rajendra, it is quite clear on the English authorities that the denial of the receipt of money proved to have been received by an accused person is evidence of dishonest misappropriation [*R. v. Jones*[1] and *R. v. Creed*[2]]